

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

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BEN WEINSTEIN

Case No.

Plaintiff,

COMPLAINT AND JURY DEMAND

- against -

**MICHAEL WEISS AS TRUSTEE OF THE IDY
WEISS TRUST**

Defendant.

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COMPLAINT

Plaintiff, Ben Weinstein, by way of complaint against Defendant, Michael Weiss as Trustee of the Idy Weiss Trust, alleges and says:

JURISDICTION AND VENUE

1. This is an action for damages arising in diversity for property damage due to water emanating from Defendant's apartment at 4101 Indian Creek Dr, Apartment 308 ,Miami Beach, FL 33140.
2. This court has jurisdiction pursuant to 28 U.S.C. § 1332, granting this court jurisdiction over actions arising due to the diversity of citizenship of the parties.
3. Plaintiff Benjamin Weinstein is a resident of New Jersey, and Defendant Michael Weiss resides at 3920 Cypress Avenue, Brooklyn, New York.
4. Upon information and belief, the trust is for the benefit of one Idy Weiss, who also resides in Brooklyn, New York.

5. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391(b)(1) as Defendants reside in this district.

THE PARTIES

6. Plaintiff, Ben Weinstein, residing at 126 Autumn Road, Lakewood, New Jersey, is an individual who owns 4101 Indian Creek Drive, Apt 208, Miami Beach, Florida.
7. Defendant, Michael Weiss as Trustee of the Idy Weiss (“Weiss”) upon information and belief, is trustee of the trust that owns 4101 Indian Creek Drive, Unit 308, Miami Beach Florida.

FACTUAL BACKGROUND

8. Mr. Weinstein uses his apartment as a vacation home for himself and his family. When not in use by the immediate Weinstein family, the apartment is generally vacant.
9. On or about November 14, 2019, the Weinstein apartment was severely damaged by water emanating from the apartment above.
10. This apartment was unit 308, owned by the Idy Weiss Trust.
11. The water damage caused damage estimated at \$194,382.18.
12. Plaintiff is unaware of whether unit 308 was occupied, and by whom on the date of the incident.
13. The water leaked for a substantial amount of time and caused damage to virtually all of Plaintiff’s apartment.
14. This incident was due to the failure of the Defendant to exercise due care in maintaining his apartment.

COUNT ONE (Negligence)

15. The allegations contained in this Complaint are incorporated herein by reference as if fully set forth herein.
16. Defendant failed to maintain his property in an appropriate condition and failed to properly monitor the condition of his apartment.
17. The failure to maintain and monitor the apartment allowed the water leakage to occur and last for an extended period of time, leading to damages to Plaintiff's apartment.
18. Plaintiff was damaged by the Defendant's negligence and is entitled to damages.
19. These damages are approximately \$194,382.18.

WHEREFORE, Plaintiff seeks judgment against the defendant in their favor as follows:

Judgment in an amount to be determined at trial, but not less than \$194,382.18.

- A. Awarding Plaintiff the costs and disbursements of this action, including reasonable counsel fees, costs and reimbursements of expenses, including expert fees, in amounts to be determined by the Court;
- B. Awarding prejudgment interest; and
- C. Granting such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all issues so triable.

Dated: June 18, 2020

/s/ Avram E. Frisch
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